

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1465

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

v.

DOMINGO ZAYAS, a/k/a Luis Nunez, a/k/a Luis Machado,
a/k/a Luisito, ORLANDO MACHADO, a/k/a Julito, LUIS
NUNEZ-RAMOS, a/k/a Indio, CARLOS RIVERA-SANTIAGO,
a/k/a Carlitos, ANGELO ROCHE, a/k/a The Old Man, JOSE
VELASQUEZ, a/k/a Vaquero, a/k/a Cowboy, FABIAN
RODRIGUEZ, ANTONIO MORALES, a/k/a Tony the
Mechanic, ANTHONY RODRIGUEZ, a/k/a Little Tony,
Defendants-Appellants.

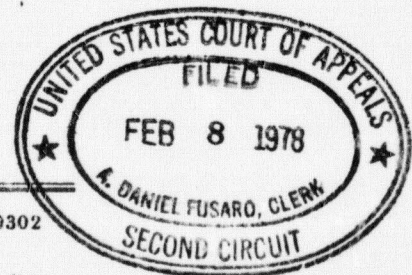
JOINT APPENDIX
(Volume II—Pages 704a-742a)

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Docket Entries Orlando Machaldo	II-a--II-e
Transcript of June 28, 1977	704a-742a

3-16-77	Application to reduce bail by defts(atty Pres). Application to reduce bail "denied". So ordered Broderick, J.	3	4/29/
4-29-77	Pre-trial conference held.		
5-17-77	Filed Deft's NOTICE OF MOTION and affidavit of John J. Broderick, for an order directing that a hearing be held to determine ,... whether the U.S. Atty should be allowed to introduce into evidence or cross-examination the prior criminal convictions of the deft/ RET: 5-26-77 @ 9:30 AM.		
5-18-77	Pre-trial conference held. Attys & interpreters present... Broderick, J.	3	5-18-
5-18-77	Deft. (atty present) Supervision hearing held & continued... Broderick, J.		
5-26-77	Filed Deft's Affidavit in support of my motion for a hearing as to the suppression of statement given to law enforcement agents.		
5-27-77	Filed Deft's Requests to Charge.		
5-27-77	Filed Govt's Trial Memorandum.		
5-27-77	Filed Govt's Requests to Charge.		
5-23-77	Trial begun with a jury as to this deft. (Atty Pres) Jury Selection.		
5-24-77	Trial Cont'd. Jury Selection cont'd.		
5-25-77	Trial Cont'd. Jury Selection cont'd and concluded.		
5-26-77	Trial Cont'd.		
5-27-77	" "		
6-1-77	" "		
6-2-77	" "		
6-3-77	Filed transcript of record of proceedings, dated 4-29-77		
6-6-77	Filed ORDER authorizing the appointment of three interpreters daily for the deft. BRODERICK, J.		
6-6-77	Trial Cont'd.		
6-7-77	" "		
6-8-77	" "		
6-9-77	" "		
6-15-77	Filed CJA 21 Authorization & voucher for An Interpreter. Copies 2&5.		
6-16-77	Filed CJA 21 Authorization & voucher for interpreter, Copies 2&5.		
6-16-77	Filed CJA 21 Authorization & voucher for interpreter, Copies 2&5.		
6-16-77	Filed CJA 21 Authorization & voucher for interpreter, Copies 2 & 5.		
6-16-77	Filed CJA 21 Authorization & voucher for interpreter, Copies 2&5.		
6-13-77	Trial adj'd to 6-14-77. Juror #7 excused and a alternate juror is excused.		
6-14-77	Trial Cont'd.		
6-15-77	" "		
6-16-77	" "		
6-21-77	" "		
6-22-77	All parties rest. Deft's motion for a directed verdict of acquittal and to dismiss the indictment, DECISION RESERVED.		
6-24-77	Filed CJA 21 Authorization & voucher for interpreter, copies 2&5.		
6-24-77	Filed CJA 21 Authorization & voucher for interpreter, copies 2&5.		
6-24-77	Filed CJA 21 Authorization & voucher for interpreter, copies 2&5.		

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DATE	PROCEEDINGS
6-28-77	Filed Govt's SUPPLEMENTAL REQUEST TO CHARGE.
6-27-77	Deft - Trial cont'd Deft's motion for a directed verdict of acquittal and to dismiss the indictment - DENIED. Deft's motion for a mistrial - DENIED. Govt summation. Deft's summation.
6-29-77	Court charges the jury. Jury deliberating.
6-30-77	Jury deliberations cont'd.
7-1-77	Jury deliberations cont'd. Jury finds the deft., GUILTY on each of counts 1 & 23. Sentence 7-19-77. Pre-sentence investigations ordered. Deft cont'd remanded in lieu of bail. BRODERICK, J.
7-8-77	Filed transcript of record of proceedings, dated 5-18-77
7-19-77	Filed transcript of record of proceedings, dated June 2, 6, 28 1977
7-19-77	Filed transcript of record of proceedings, dated June 9, 13, 14, 16 1977
7-19-77	Filed transcript of record of proceedings, dated June 29, 30 July 1, 1977
7-19-77	Filed transcript of record of proceedings, dated June 21, 22, 27, 28 1977
7-27-77	Filed NOTICE OF MOTION on behalf of the deft, for an order Directing that a psychiatric examination be held. Affidavit of John J. Broderick attached.
7-27-77	Filed MEMO-ENDORSED on above motion - Motion Granted to the extent set forth in proceedings of this date. BRODERICK, J. m/n
7-27-77	Filed Conference held. BRODERICK, J. 3 7-27 E 1
8-1-77	Filed CJA 20 Appointment & Voucher for counseling services. Copy #2.
8-1-77	Filed CJA 21 Authorization & voucher for expert or other services. Copies 2&5.
8-1-77	Filed MEMO ENDORSED ON deft's motion filed on 5-17-77..... Motion to suppress, denied at pre-trial proceedings on 5-18-77. Motion to preclude introduction of evidence of prior criminal convictions denied without prejudice to renewal of application in accordance with ruling at pre-trial proceedings on 5-18-77... SO ordered BRODERICK.
9-6-77	Filed ORDER - that an examination of the deft be made for the purpose of determining the mental condition of the deft and obtaining an evaluation report to assist court and counsel concerning the sentence of the deft. BRODERICK, J. (2 copies to marshal)
9-14-77	Filed Govt's MEMORANDUM OF LAW in opposition to deft's post- conviction motions to set aside the verdict.
9-15-77	Deft w/a/p Interpreter Margarita Cartagena present. MOTION ARGUED. BRODERICK, J.
9-16-77	Filed Deft's, Orlando Machado, affidavit & notice of motion to set aside the jury verdict of 7-1-77. Ret. 19-77.
9-16-77	Filed Deft's Memorandum of Law in support of his motion to set aside the jury verdict.
9-16-77	Filed Government's memorandum of law in opposition to deft's Orlando Machado & Julia Ramos, post conviction motions to set aside the verdict.
9-15-77	Filed MEMO-ENDORSED on deft's motion filed 9-16-77. MOTION DENIED. BRODERICK, J.
9-29-77	Filed CJA 21 Authorization & voucher for expert or other services. Copies 2 & 5.
10-2-77	Filed transcript of record of proceedings, dated 10-2-77

PROCEEDINGS

71 Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the atty gen for impr for a period of NINE (9) YEARS, on each of counts 1 and 23, to run concurrently with each other. Pursuant to the provisions of Title 21, Sec. 841 U.S.C., the deft is placed on Special Parole for a term of SIX (6) YEARS, to commence upon the expiration of confinement. BRODERICK, J. (all copies issued).

7 Filed J & C. Deft delivered to Warden M.C.C. on 11-1-77.

37 Filed Deft's Notice Of Appeal to the U.S.C.A. for the 2nd Circuit, from def Judgement dated 11-1-77. copies issued.

A TRUE COPY

RAYMOND E. BURGHARDT, Clerk

By *[Signature]*
Deputy Clerk

mmhh 1

UNITED STATES OF AMERICA

v.

FERNANDO GALLARDO, et al.

June 28, 1977,
10 A.M.

--

(In the absence of the jury.)

MR. LANDAU: Your Honor, if I may, with the Court's permission would it be all right during part of the summation to sit back here. I have some notes I want to look over, yet my position behind whoever is summing up might look like I'm not paying attention. So I will refrain from doing anything, except focus my attention on the speaker.

THE COURT: I think that will be all right.

MR. BRODERICK: I should have said this before the jury comes in, I will say it quickly, my colleague at the bar, Mr. Mendez, has asked me if he could use one page of the transcript and hold it in his hand while he is summing up. It is CJA material. May he use one page of the transcript?

THE COURT: I see no problem with that.

(Jury in box.)

THE COURT: Good morning, ladies and gentlemen. We will continue this morning with the summation by Mr.

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2 Mendez.

3 MR. MENDEZ: Your Honor, members of the
4 prosecution, fellow counsel of the defense, members of
5 the jury: while I was sitting in this courtroom listening
6 to the brilliant exposition of Mr. Moss yesterday, I had
7 to agree with him in two of the most important things he
8 told you. The first of them is the seriousness of the
9 case. I have to agree with him that this is a very serious
10 case, because a few factors are involved. First, the
11 case is serious because of the substance involved in it.
12 I will not tell you, because Mr. Moss will be telling you
13 at the end of the case, how destructive, how harmful,
14 how bad heroin is. It involves a substance which has been
15 doing a lot of harm and has been destroying our youth,
16 our young people, and even not so young people. I will
17 not go into that, because Mr. Moss will take care of that.
18 It is serious because of the quantity of heroin involved
19 in the case. It is serious because of the amounts of
20 heroin involved in the case. It is serious because of the
21 very nature of the conspiracy in the case.

22 I have the duty and the obligation of representing
23 only one man here. That man is the man with the balding hair,
24 with the blue suit, who has been identified as Angelo Roche.
25 In his name I cannot deny that that there has been a big

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2 conspiracy in this case; I cannot deny that a lot of
3 evidence has been seized in the way of heroin, enormous
4 amounts of money from people named in the indictment,
5 and that there was a big conspiracy to bring heroin into
New York. That I cannot deny. To do so would mean not
to be truthful. To do so would amount to lying to you. To
do so would amount to trying to cheat you. That is not
my duty, that is not my obligation and that is not my
purpose.

11 The case is serious also for another reason,
12 probably a more important reason than the ones that I
13 have been talking to you about. The case is serious
14 because of the manner in which it has been handled and
15 the case is serious because of the consequences that each
16 one of these defendants faces in a case like this.

17 You heard the testimony of the then criminals
18 and now right arms of the law -- Rossy, Rivera, Tirado,
19 Cruz, the big pushers, the big sellers, the men who pleaded
20 guilty and got away with probation or with small sentences.
21 You heard the lawyers ask them if they considered at the
22 time of pleading guilty the sentence they could have gotten.
23 You heard that it was asked of them if they considered
24 that they could have been sentenced up to 30, to 45 years.
25 30 years in a life of one human being. 45 years in the

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1 mmhh 4

2 life of one human being. In the case of my client, three
3 counts, you can imagine how serious if the consequences
4 are that he is facing in this case.

5 But there are other reasons for the case being
6 serious. The case is serious in itself because of the
7 way it is being handled. We have come here to see what
8 amounts to a mass trial, 39 persons having been named as
9 conspirators, 23 of them having been indicted, 9 of them
10 are on trial. For the past six weeks you have listened,
11 witnessed and seen evidence. To describe it in not so
12 sophisticated terms, tons of evidence, heroin, money,
13 testimony, 39 people. At this stage of the proceedings
14 how well and how precisely can you distinguish one of
15 the defendants from another? How well and precisely can
16 you distinguish each defendant from the other defendants
17 who are not on trial? From the other conspirators who have
18 not been indicted? Those are the consequences of a mass
19 trial, a type of trial which is not typical to our system
20 of justice, the system of justice in the United States,
21 a type of trial which is more typical of totalitarian
22 countries, where a class of people are tried together,
23 where people of the same religious sect are tried together
24 and convicted because of that, but not typical to our
25 system of justice, a system of justice which recognizes church,

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1 mmhh 5

2 the individual. And so we have the Bill of Rights. You have
 3 an enormous responsibility on your shoulders to listen
 4 to the evidence, to analyze it, and to judge each one of
 5 these men individually by their own personal acts.
 6 Mr. Ricardo Garcia, Mr. [unclear] at this stage representing
 7 Mr. Raymond Valentine, speaking of the others? Well,
 8 after all, they, you and I are all human beings. I do
 9 worry about the effect of a massive trial like this can
 10 have on each one of these men. My duty is considerably
 11 more minor than yours, my responsibility is considerably
 12 more minor than yours. Why? Because I have only to speak
 13 on behalf of Mr. Angelo Roche. It is a duty imposed upon
 14 me by the law and by the canons of ethics and by the
 15 agreement I have with Mr. Roche. So from now on I will
 16 only refer to him, my client, and let us see what the
 17 government has brought against Mr. Roche. Roman in regard
 18 to a conversation I said that I agreed with Mr. Ross in some of
 19 the things that he was addressing to you, the seriousness
 20 of the case. There is another thing I agree with him in,
 21 and it was that part when he said, "Well, you don't have
 22 to rely on Raymond Rivera's testimony alone. I concede by
 23 itself alone is not the best you could have." And at
 24 that stage of his talk it seemed to me like Mr. Moss
 25 was apologizing for having only the testimony of Raymond

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2 Rivera to bring to you.

3 Why do I refer to Raymond Rivera? Well, we
4 have had here 13 witnesses: Mr. Raymond Rivera, Mrs. Maria
5 M. Sosa, Mr. Luis Rodriguez, Detective William Burbage,
6 Mr. Ricardo Garcia, Mr. Raymond Rossy, Mr. Jose Guzman,
7 Mr. Raymond Valentine, Mr. Raymond Vallyely, Robert Ragget,
8 Kenneth Robinson, Benito Cruz, Juan Roman.

9
10 Of those witnesses, if you recall the evidence,
11 only three of them mentioned Mr. Roche. Raymond Rivera,
12 I submit to you, is the only witness against him. And we
13 will go to that. Then there was Mr. Guzman, who spoke
14 to you about Mr. Roche's arrest and the documents that
15 were seized from a car, a 1970 Cadillac parked in front
16 of the house. And then the other witness who testified
17 in regard to Mr. Roche was Detective Juan Roman in regard
18 to a conversation he had with the defendant Jose Velasquez,
19 Cowboy, at a bar, a conversation concerning the possible
20 purchase of narcotics. I submit to you that the testimony
21 of Mr. Guzman, Detective Guzman, and that of Detective
22 Juan Roman are of an exculpatory nature, rather than in-
23 criminatory, and I will return to the testimony after I
24 go to Raymond Rivera.

25 So we have Roman, we have Guzman and we have

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2 Raymond Rivera. Let us go to Raymond Rivera.

3 I submit to you that there are three reasons
4 why the testimony of Raymond Rivera should not be sufficient
5 to convict this man. One of the reasons is the nature
6 of his testimony, the testimony of Raymond Rivera, the
7 personality of Raymond Rivera himself. And the second
8 thing Mr. Moss said in his speech, corroboration -- the
9 lack of corroboration in regard to Angelo Roche.

10 Let us see what the testimony of Raymond Rivera
11 brings to you. This is a man who two years after he made
12 some narcotics dealings comes to you -- almost three years--
13 comes to you to testify as to transactions in heroin which
14 started in August, 1974, and lasted until May, 1975. He
15 comes here and tells you in his direct testimony about
16 the number of trips, he tells you about the dates, he
17 tells you about the people that he described to you, he
18 tells you about the moneys he made, he tells you about
19 the moneys he returned to the organization. He tells you
20 all this with preciseness and everything seems to fit.
21 And at the end of his direct testimony, very brilliantly
22 conducted by Mr. Moss, everything seems all right. He
23 has the dates, he has the amounts, he has the quantities,
24 he has the names.

25 But did he actually have the names, the amounts,

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2 the quantities? Let us go through that testimony. The
3 names of the people he dealt with, how many full names
4 do you have there, ladies and gentlemen? Angelo, Ismael,
5 Angelo the brother of Ismael, Angelo the Old Man, Jose
6 Luis, the Old Man, who happens also to be a mechanic, Tony
7 the Mechanic, Puton, Cuba, Norberto, Laura -- how many
8 full names? Doesn't it seem strange to you that a man
9 who knows people for such a long time, that deals with
10 people for such amounts of money, cannot even know the
11 full names of the people he deals with? In the case of
12 Mr. Jose Velasquez he even said that his name was Rafael,
13 that he had known him as Rafael, and that he had included
14 his name as such that he gave to Amador, that statement,
15 that document that most of the attorneys on cross-examination
16 were asking questions from.

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2 The names, names that are repeated; Angelo
3 twice, The Old Man twice. Even the nicknames are
4 repeated.

5 Doesn't it point out a pattern of conduct
6 when you start to invent something and that comes to
7 your mind, you invent, and you do not know well, and
8 is mentioned to you, you are up and take as yours?

9 And we will go into that as to the name.

10 And we will go to Angelo in regard to Roman
11 in that conversation that bar in 9th Street some time
12 in 1973. We will go to that later.

13 Well, this is a man who had a very good
14 memory at the beginning and who knew about the dates
15 and who knew about the amounts and who knew about the
16 quantities.

17 When he is confronted, when he is confronted
18 in cross examination with statements given by him
19 to Amador, with testimony given by him before the
20 grand jury in prior proceedings, with testimony given
21 by him in prior trials, things change. Then he
22 starts to say, "I don't recall; it could be; probably;
23 I don't remember; it could be the beginning of
24 August; it could be the middle of August; could be the
25 end of August; could be the beginning of September;

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2 could be the middle of September; could be the end of
3 September; could be the beginning of October; could
4 be the middle of October; could be the end of October.
5 I know I sold him. When I don't remember.

6 "I don't have a memory for the moneys I
7 earned. I don't know how much I make. Well, the
8 money I spent. I don't remember. I don't recall."

9 "When did you start using cocaine?"

10 "I don't remember."

11 "When did you start using cocaine?"

12 "I don't remember."

13 And he becomes, he turns from the man
14 who could remember and who could be precise, he starts
15 with "I don't remember; I don't recall; could be; prob-
16 ably."

17 Aside from that, here is a man who was an
18 addict himself and who told you that the cocaine, he
19 would purchase it from Ismael, whose name he did not
20 know. He never came to know the full name of Ismael.
21 And if you look at the indictment you will see that
22 Ismael is not in the indictment, and you will see the
23 Angelo, the brother of Ismael, is not in the indictment.

24 He could not remember how he got involved
25 in cocaine and he did not recall the moneys he spent

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1 qta3

2 in cocaine.

3 But more important than that, he became
4 addicted to heroin, and he did not have to go to the
5 streets to buy the heroin because he had heroin with
6 him. And you heard him say that he takes the
7 heroin from the one he had for sale and that he would
8 pay for that heroin from his own money.

9 I ask you, didn't he give you a full
10 account of the heroin he received? Didn't he tell
11 you to whom he distributed each package? Didn't
12 he tell you how he sold each bit of heroin he received?

13 From where then did he get the one he used
14 if he was selling all of it?

15 There was nothing left for him to use.
16 But he wants you to believe that that is true.

17 I would now like to go into the incon-
18 sistencies he had in his testimony. Probably Mr.

19 Linn, who was the one who dug them out, will go through
20 them.

21 You will recall Mr. Linn questioned as to
22 the number of packages on each trip, how he had told
23 Mr. Amador about so many packages and how he was telling
24 you now about so many packages, and how he had told
25 Amador about so many thousand dollars and he was telling

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2 you about so many thousand and he could not explain.

3 All he said was, "Well, I don't remember. Well,
4 it could be. Well, the best of my recollection.
5 Well, that was my recollection at that time. Well,
6 that is my recollection now."

7 That is the type of testimony that you
8 have on his part.

9 And then we go to his very personality,
10 the personality of Raymond Rivera.

11 You have been told about that before.
12 I don't have to repeat that. Not only had he been
13 convicted before, but he had been convicted of cheat-
14 ing. He was convicted of fixing phony documents for
15 stolen cars.

16 He did not go out and steal the car, he
17 would prepare the phony papers. His role in life
18 was to cheat people. His role in life is to lie.
19 His role in life is to bring people into trouble.
20 That is his personality.

21 The people who have dealt with him for any
22 reason or another, where are they now?

23 Gorgonio Lopez, his brother-in-law, he brought
24 him into narcotics. He admitted that. He brought
25 him to a place where a transaction took place.

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2 You recall his testimony in that case in
3 Puerto Rico where Gorgonio Lopez knew nothing about
4 the drug transaction, he brought Gorgonio with him,
5 who was caught red-handed, Gorgonio pleaded guilty,
6 although he, Rivera himself, said that Gorgonio was
7 just an innocent bystander.

8 The godfather of his child, he admitted
9 the godfather relationship being one -- being a very
10 sacred one among Catholics and Puerto Ricans. Where
11 is he? In jail.

12 Ernesto Tapia and Victor Correa, the ones
13 he went after in Puerto Rico to deal in drugs, he said
14 it, that he had gone looking for them to make narcotics
15 dealings with them while they were in jail.

16 Where is Raymond Rivera? Out of jail.

17 Rivera made a lot of money and tells you
18 he is robbed, making a living testifying for the
19 government, making 900 -- \$820 a month.

20 Do you think he is broke? Do you actually
21 think that he was a heroin addict? Do you
22 actually think that he was a cocaine addict?

23 It's false. False. A man like that
24 could never be an addict. A man like that could only
25 exploit the people. A man like that could only obtain

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2 wealth from that horrendous racket, narcotics.

3 That is a man who made money out of that.
4 That is a man who stayed out of jail, not only in this
5 case, but in a case in which he was caught red-handed
6 dealing narcotics. That is a man who, Mr. Unlaster
7 brought out, didn't pay any taxes. That is a man
8 who has been cheating the government, has been cheating
9 everyone, and has money to stay out of jail. And
10 that is the man you have as a witness against my
11 client.

12 He even got a better deal than the rest of
13 them.

14 Rossy spent sometime in jail, Benito Cruz
15 spent time in jail, Tirado -- Raymond Valentine, Garcia,
16 all of them spent time in jail. Rivera, not a
17 single day in jail; probation. He is being fed and
18 cared for by the government.

19 That is the type of man Mr. Moss brought
20 as a witness against my client.

21 And that is a man who only wants to be on
22 the side of the law when he is in trouble.

23 Before, when his associate would sell drugs
24 in the social club, he never went to tell the authori-
25 ties.

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When Gallardo was going to jump bail he never went to tell the authorities. He comes to the authorities when he is in deep trouble.

You recall the questions I put to him. One of them was, "You felt that the government had a very strong case against you, didn't you?"

Answer: "Yes."

He knew the government had a strong case against him.

So there he came to you to testify against my client.

What other evidence do you have in this court against my client?

All the packages of heroin lying on that table, none of them was from him. Not on one occasion is he placed by any other of the witnesses dealing in drugs; even speaking about drugs.

Detective Roman testified as to a conversation when he was present while allegedly Mr. Velasquez was talking about drugs with Detective Roman, present in a bar, within talking distance.

So you ladies probably have never been in a bar. I don't know if the gentleman have ever been in a bar.

718A

Baratools are very near one from the other. You are sitting there or you stand by them. And to be present in a bar when narcot conversations take place, is that a crime? Is that a crime, ladies and gentlemen of the jury, to be having a drink in a bar, standing up? It was not even a conversation in which three people were sitting at a table or beside a table talking, engaging in conversation. It was not even a conversation in which Angelo took any part in it.

Detective Roman said it to you, question placed by me to Detective Roman:

"Did you ever make any dealings in narcotics with Angelo?"

"A No."

"O Did you ever have any conversations in narcotics with Angelo?"

"A No."

And it was his testimony, the testimony of Detective Roman, that he did have narcotics transactions with Moises, one of the defendants named in this trial, and it was his testimony that he did have narcotics transactions with Mr. Velasquez.

Why didn't he have a narcotics transaction

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with Mr. Angelo Roche? Why?

He knew him. Mr. Roche was present in the same bar when he was talking drugs with Mr. Velasquez. Why didn't he have a transaction or even a conversation with Mr. Roche?

Because he could not. Because you cannot make transactions with one who is not dealing in drugs.

Guzman, Detective Guzman, the one you heard buying drugs all over the place. He bought drugs from Rossy, he bought drugs from Benito Cruz, he bought from Valentine, if I recall well; from everyone. But he never bought drugs from Angelo. He never talked drugs with Angelo.

Why? Because he could not. Because you cannot buy drugs from one who is not selling drugs.

The searches, the seizure of drugs, you have heard about -- you heard Detective Burbage, you heard Detective Robinson and you heard Detective Guzman. They went from one place to another and they searched houses and they searched people and they arrested people, and they seized all the heroin that is on that table, and I don't know if more.

Did they seize any from my client? No.

720A

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Mr. Guzman went to Puerto Rico, to Santa Isabel, Puerto Rico. He was going to arrest Mr. Roche. And in getting to his house he saw a car which he thought looked similar to one he had seen in New York being driven by Mr. Velasquez, and he concluded it was similar because it was red and white, the only reason for it, because he had no other identification for that car.

And he went there and he asked Mr. Roche's permission to search his house, and he did search the house. You heard him.

I asked him did he found any drugs?

"No."

And he searched the car. Did he found any drugs?

"No."

Did he found any money?

You have heard about the enormous amounts of money speaking in my terms for me. Twenty, thirty thousand dollars is a lot of money. You have heard about the amounts of money seized in different places from different person, from different defendants, from different co-conspirators.

Did he seize any amount of money, any what-

721A

1 soever from my client Angelo Roche? No.

2 Did he seize any amount of money from his
3 house? No.

4 Did he seize any bank account, a checkbook?
5 No.

6 Not because he did not look. You have
7 heard every witness testify here as to the many docu-
8 ments, some of them with no significance whatsoever,
9 that have been seized in this case.

10 Mr. Moss, the brilliant young, handsome
11 prosecutor for the government, show you documents, and you
12 will have them. Mr. Gonzalez, Mr. Roche's driving
13 license, some which I have crossed but you will have
14 the opportunity to see, did not seem to have any
15 importance for Mr. Moss, like special receipts,
16 Customs receipts, very insignificant documents.

17 What is this?

18 If a bank account, checkbook had been found
19 in Mr. Roche's possession or in his house, don't you
20 think he would be here to show you that Mr. Angelo
21 Roche was a wealthy man who benefited from drug
22 dealings?

23 There is not such a thing, ladies and
24 gentlemen of the jury; no money, no bank account, no
25

722A

safe-deposit boxes; only Raymond Rivera's testimony, only Raymond Rivera.

But Mr. Moss tells you that he has corroborated Mr. Rivera with the fact that Mr. Roche knew Mr. Velasquez.

Is it a crime to know someone who lives nearby the place where you have lived for many years?

You heard Rivera. You heard him say that Mr. Roche did own a restaurant, did own a grocery store on 9th Street.

And you will have here in the evidence submitted by Mr. Moss the documents seized from Mr. Roche's car. You will have the driver's license with the address of 29 East 9th Street, New York. We do not come here to deny this.

You heard Mr. Jaime Velasquez, our witness, testify that he knew Mr. Roche, that he knew him for a number of years, that he did operate a restaurant in that neighborhood.

So if Mr. Roche live on 9th Street and Mr. Velasquez live on 9th Street, was it a crime to know him? Was it a crime to be on the same bar where drug dealings and drug conversations were taking place? No. That is the cause of living. You

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meet and you speak and you are in the places with a person you live nearby with, you are neighbors.

Mr. Moss thinks it's very important, the fact, give a lot of importance to the fact that in the 1975 car, which was searched in front of the residence of Mr. Roche, papers belonging to the Reedman -- to two cars bought in Reedman Chevrolet were found. Some of the papers pertained to the purchase and the shipment of the 1975 Cadillac that you heard belong to Jaime Velasquez, who testified he had invested his life savings into buying that car because he was seeking a transfer to Puerto Rico and that he have send the car to Puerto Rico and that he had asked for Mr. Roche to safekeep the car for him because at the place where Mr. Jaime Velasquez' parents live there was a lot of vandalism. And you heard him testify as to the source of the documents pertaining to the 1975 Cadillac, and you heard him testifying to the effect that on the date he went to buy the car in 1975 he went with Mr. Jose Velasquez, which he also knew because he used to live in the neighborhood where he would be distributing mail as a mailman, and he said since Velasquez was going to Reedman in Pennsylvania he went with Mr. Velasquez, who was driving his car.

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Upon getting to Needman, Mr. Velasquez pulled out some documents from the car and gave them to Jaime and that they parted their ways and Mr. Velasquez went one way, he went another, he bought his car, he put the documents in the trunk of the car, and he never saw them again and he never returned the documents to Mr. Jose Velasquez.

Mr. Moss says that you should not believe Mr. Jaime Velasquez because that his account of how the documents ended up in the glove compartment of the 1975 Cadillac -- that you should not believe that because of two reasons:

One, that the documents were not found in the trunk but were found in the glove compartment.

Come on, Mr. Moss, documents may be dumped into a car, in the trunk, but if at any time you are cleaning that trunk and you are putting things into that trunk, the most intelligent thing to do by a person who does not know the importance of the documents is to place them in a safer place, the glove compartment.

Documents pertaining to the purchase of a car do not belong to a trunk, belong to a glove compartment.

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2 So the thing that he dumped them into a
3 trunk and they appear later in the glove compartment.
4 I don't think that should make a liar of Mr. Jaime
5 Velasquez, a man who is a federal employee, a man who
6 Mr. Moss could not bring to you any dealings on his
7 part, any criminal prior record; a man who came here
8 to tell the truth.

9 Compare the witness I brought to you, Mr.
10 Velasquez, with the witnesses Mr. Moss have called to
11 the stand and pretends you to believe, the three Ramons,
12 Rossy, Valentine, Rivera; Cruz, Garcia, the names of
13 the people he brought as witnesses, the personality
14 of his witnesses. Compare them to Mr. Velasquez.

15 Mr. Moss also says that you should not
16 believe Mr. Jaime Velasquez because the documents per-
17 taining to Mr. Jose Velasquez are 1973 documents.

18 Of course. If they had been 1975 docu-
19 ments, probably Mr. Velasquez would have been more care-
20 ful with them. Probably he would have looked for
21 them. But they were old documents, 1973 documents,
22 pertaining to a 1973 car.

23 Who knows what happened to that car?
24 Who knows he had sold the car? What importance does
25 it have?

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2 We do not deny that Mr. Roche knew Mr.
3 Velasquez. They were neighbors from the same neigh-
4 brohood for many years. He was a businessman.
5 He had a restaurant, he had a grocery store. The
6 restaurant owner, the grocery store owner have to know
7 everyone in the community. Otherwise how will he
8 do business?

9 Is it a crime for him to know Mr. Velasquez?

10 And I submit to you that that conversation
11 between Mr. Velasquez and Mr. Roman in 1973 about nar-
12 cotics -- and I beg each one of you your closest atten-
13 tion at this time. I know it's been long hours
14 listening to speeches by Mr. Mess and by my predecessors,
15 but at this time I beg and I would demand your complete
16 attention.

17 Let's go to that conversation between Mr.
18 Roman, Detective Roman, and Mr. Velasquez some time
19 in the spring of 1973 at the bar in which Mr. Roman
20 was trying to buy some narcotics from Mr. Velasquez
21 and Mr. Roche was standing within touching distance
22 but without taking any part in the conversation.

23 Why do I ask your attention? Because
24 these might be the genesis, this might be the origin
25 of Mr. Roche's problems. This might be the reason

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for Mr. Roche having to sit there for weeks and weeks standing trial in which he should not be.

Why?

You heard Rivera, he had long conversations, hours conversations, days interviews with the agents. Many names were asked from him, many names were asked of him. All the information he knew was asked of him. Many agents did interview him.

Imagine, imagine a scene like this:

"Do you know Jose Velasquez?" agents asking Mr. Rivera.

"Yes, I know him."

"Had you narcotics dealings with him?"

"Yes, I did."

"Do you know a man by the name of Angelo Roche?"

"He's a neighbor."

"He used to live in the vicinity of 9th Street. He's an old man, 47 or 50. He's somewhat bald, he's dark-skinned, he is Puerto Rican and he used to own a grocery store."

He called him Angelo.

"Yes, I know him."

"That man, do you know anything about him?"

728A

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"That man once was present in a conversation between Agent Roman of the New York Drug Task Force and Jose Velasquez."

"How is that?"

"Well, Jose Velasquez and Roman were talking drugs and he was there."

"I know him. He was one of my clients. Now that you said he was one of my clients. I recall his name as Angelo."

"What else do you know about him?"

"Well, Angelo, Angelo The Old Man," because that is the name by which Raymond Rivera identified Angelo Roche, Angelo The Old Man, not his full name.

(Continued on next page.)

729A

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2 And even a wrong name. That was not his name.
3 And I submit to you that no one but Raymond Rivera mentioned
4 the name Angelo Roche, not even Benito Cruz. And I call
5 your attention to that party back in Puerto Rico, 1974,
6 Christmas, in which all these drug dealers were present.
7 I ask you to recall, to remember that Rivera testified
8 that they went into his bedroom because they wanted privacy,
9 and in there it was explained to him that Benito Cruz
10 was taking his place, that Benito Cruz would be substituting
11 for him and would be doing the same job Raymond Rivera
12 had been doing. Why do I want you to remember that? Be-
13 cause I want you to consider when you go into your deliberating
14 room, I want you to consider the fact that Benito Cruz
15 was substituted for Raymond Rivera for a while here in
16 New York. He was a man who was going to distribute to
17 the people Rivera had been selling to.

18 So Benito Cruz comes to New York, takes Raymond
19 Rivera's place. Did Benito Cruz ever sell anything to
20 Angelo Roche? No. Do you recall my precise question?
21 I asked it of him, "Do you know this man?"

22 "I have never seen him in my life."

23 And that was Benito Cruz, who was doing the
24 same work Rivera had been doing, the man who was taking
25 his place, never met him in his life, never saw him in his

730A

1 mmhh 2

2 life. All you have is Raymond Rivera. You don't have
3 anyone else in this court.

4 The papers which are Exhibit 17D, Mr. Moss
5 will come after me and tell you this is incriminating.
6 Is it incriminating that he lived for a time on Avenue D?
7 Is that a crime? Or that he knew Jose Velasquez? No. All
8 you have is Raymond Rivera.

9 It is unfortunate that you have not been
10 instructed as to Mr. Roche as the Judge instructed you
11 with regard to Orlando Machado, for if that were the
12 case, Mr. Roche would be out of this courtroom. You would
13 then have nothing to do with Mr. Roche. Why? Because
14 I call your attention to the fact that the Honorable Judge
15 Vincent L. Broderick commanded you, each one of you, to
16 disregard that testimony of Raymond Rivera in regard to
17 this young man, Orlando Machado, not to take it into con-
18 sideration, to throw it away, throw it in the trash can
19 because it is worthless. A misidentification, the Honorable
20 Judge called it.

21 Why should Judge Broderick give such an instruction
22 to you? It is not for me to tell you. It is for you to
23 think, to make inferences. Why should he tell you something
24 like that, when a few days before you had heard Mr. Moss
25 standing behind the podium, "Are you certain that this

731A

1 mmhh 3

2 Orlando Machado is the man you sold a package to for \$10,000
3 and you called him Ferde?

4 "Yes.

5 "Is he Ferde?

6 "Yes.

7 "Are you aware of the fact that he has never
8 been known as Ferde?

9 "Well, I knew him as Ferde. I met him as
10 Ferde, sold to him as Ferde."

11 And he didn't say it only one time; he said
12 it twice. And he reaffirmed himself on that. And then
13 comes the judge, the Honorable Judge, and tells you,
14 "Throw away that testimony. Don't consider it. Disregard
15 it completely." Why? What happened? What is wrong with
16 Raymond Rivera's testimony in regard to Orlando Machado?
17 Think it over. Think deep. You have a serious responsibility.
18 The responsibility you have on your shoulder, I don't
19 envy you for that. Mr. Moss said it is a very serious
20 case.

21 Angelo Roche came here without ever having been
22 charged with any dealing in narcotics, without a word of
23 narcotics in his life, and there is nothing before you
24 except the testimony of Raymond Rivera. He came here
25 from Puerto Rico. You recall the first day I addressed you,

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1 mmhh 4
2 I told you I am Mr. Mendez from Puerto Rico. By my accent
3 and by my name you should know by now I am Puerto Rican.
4 And I said, "I come here with my countryman to defend him
5 from the charges which have been leveled against him." We
6 have been dealing with a mass trial, nine defendants, 23
7 people indicted, 39 conspirators. I demand from each one
8 of you to do justice; I demand from each one of you that
9 when you go into the deliberating room to consider Mr.
10 Roche's case you consider him as an individual, as a human
11 being, by the evidence against him, and not by the
12 large amounts of heroin which were seized from the Gallardos
13 or the Machados, Paquito Machado or from Valenzuela, or
14 however you call him, over there in California, or in
15 Puerto Rico. I demand from you to consider this man's
16 case alone and the evidence against him alone. If any
17 of that heroin incriminates him, consider it; if any of
18 the moneys that were seized in the case incriminates him,
19 consider it; if any of the testimony incriminates him,
20 consider it. But if it is only Raymond Rivera, for God's
21 sake, throw it away in the trash can. The freedom of a man
22 is a very cherished and very dear thing, too cherished
23 and too dear to be truncated by the testimony of a man like
24 Paymond Rivera. The freedom of a man in this country
25 is something very sacred. To deprive a man of it with

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2 the sole testimony of Raymond Rivera would be wrong.

3 And we have this brilliant, hard working, efficient, hand-
4 some Assistant United States Attorney who will come after
5 me. I challenge him to corroborate the testimony of
6 Raymond Rivera in regard to Angelo Roche.

7 He will come with the papers and he will talk
8 about the drugs. Is that guilt? I challenge him to
9 corroborate Mr. Rivera's testimony with anything else
10 but the fact that he knew Mr. Valasquez, who lived in the
11 vicinity, and the fact that he lived on 9th Street in New
12 York. Is it a crime to live in that location in New York
13 City?

14 If you recall, there came a time in which he made
15 reference to a deed of sale in Puerto Rico. That has
16 been marked as Exhibit A. If you want to have it in your
17 deliberations, you can. And it referred to a deed of sale
18 about the 12th of August, 1974. You probably asked at that
19 time what importance, if any, had the fact that Angelo Roche
20 been in Puerto Rico and signed a deed of sale on the 12th
21 of August? And Mr. Moss was kind enough to stipulate the
22 testimony of the attorney before whom that deed of sale
23 was signed, which is Efrain Bermudez Rivera.

24 What is the importance of that deed of sale? In
25 a case like this, in which a man like Raymond Rivera comes

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mmhh 6

in and tells you that someone was dealing in narcotics from 1974 through some time in the late spring of 1975, what can you do? He is not even precise as to dates. It is a very lengthy period of time. Can you account for each minute of your life? Can you account for each day in your life? Where was each of you three years ago? August, 1974? Where were you September, 1974? October, 1974, the beginning and middle and end? It is very hard. It is almost impossible. It leaves you defenseless. Why did I bring this deed of sale? Because in his direct testimony when he was very sure of himself, when he had not been subject to cross-examination, when he had not come to say, "I don't remember" "I don't recall" "Maybe," Raymond Rivera said categorically that on the 12th of August, 1974, he had sold heroin in New York to Angelo Roche. He didn't say it in those words. He said that Willie Cortes-Rios and him arrived in New York on the 10th of August, and that the second day after arrival here in New York they went to California and returned the same day, and on the next day he distributed the heroin from the firm. And that is the date in this deed of sale, Exhibit A. He was in Puerto Rico signing a deed of sale. I would like to read at this time with the permission of the Court his testimony in regard to that date. I call

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1 mmhh 7

2 your attention to page 218 from the transcript of the pro-
3 ceedings that happened in this court, and these gentlemen,
4 who are the court reporters, make a record of everything
5 that happens. So on page 218 of the record for that date
6 these questions were put to Mr. Rivera by Mr. Moss:

7 "Q Did there come a time, the next day when you
8 had a conversation with William Cortes-Rios?

9 "A He called me to Rose's house, he knows the phone
10 number, and he says, 'Well, Compe, get ready for tomorrow.
11 We are going to leave tomorrow to Los Angeles.'

12 "Q Did this all take place in August of 1974?

13 "A Yes, sir.

14 "Q Can you tell us as best you can approximately
15 when in August you arrived in New York City?

16 "A I says about the 10th, around there, the 10th
17 of August, around there.

18 "Q Did you leave for California the following day?

19 "A No, was the same following day, the next day
20 after that day.

21 "Q That is the second day after you arrived in New
22 York?

23 "A Yes.

24 "Q When did you go to the airport?

25 "A We went in the morning, early in the morning."

736A

1 mmhh 8

2 As you recall, they went to California, they
3 spent a couple of hours in the Garvey Motel, and then they
4 returned to New York.

5 Then he testified on page 229 as to leaving
6 Los Angeles, "And then from there we board the aircraft
7 and come down to the Kennedy Airport."

8 Then he goes on to describe everything that
9 happened. It is very lengthy for me to read, but if you
10 recall, they came back to Paquito Machado's apartment.
11 They met Gallardo, and Cortes told him to go to bed because
12 he had done a nice job and be ready for the next day, which
13 is the 12th. And it is the 12th that Cortes calls him and
14 takes him to Joe's Bar in lower Manhattan and he meets
15 Vaquero and he meets Roche, and he makes the first trans-
16 action with Roche, according to his testimony, the 12th of
17 August, the date he gives to you, not me, not Angelo, not
18 anybody else, but Rivera. Here it is. He gives a date
19 that Roche was not in New York, but buying a parcel of land
20 in Puerto Rico, a small parcel of land. If you want to
21 examine the deed of sale, you can do it, and you will note
22 from the deed of sale that it is not an expensive piece,
23 very low price. And you will notice that there is a trans-
24 lation of the deed of sale which was agreed to by Mr. Moss,
25 lower price, not that of a tycoon, not that of a wealthy man,

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mmhh 9

not a rich man. You can have the deed of sale and you can have the translation. And that is the case that you have against my client, Rivera's testimony.

It is true that this is a serious case. Mr. Moss will appeal to you, to your feelings in regard to the harm that heroin does and how dangerous and how harmful it is. I agree with him. I wholeheartedly agree with Mr. Moss. But you have a very, very big responsibility. Is the testimony of Raymond Rivera enough to convict this man? Is it enough to overcome the presumption of innocence? Is it enough to overcome the presumption of innocence and to have the government comply with its duty of proving his guilt beyond a reasonable doubt? Don't you have a reasonable doubt as to my client's innocence at this stage of the proceedings?

After you deliberate and reach a verdict in the case you will go to your homes and see your relatives, husbands, sons, daughters, wives. And the days will pass and you and I will be older, and from time to time you might recall the six or seven weeks you spent in Judge Broderick's court in the summer of 1977. And from time to time you might recall Mr. Mendez, the man with the strong Spanish accent from Puerto Rico, and Mr. Roche, the balding man, aging man from Puerto Rico, and you will have to

738A

1 mmhh 10

2 ask yourselves, "Did I do justice in that case? Did I do
3 justice to that man? Well, where is that Old Man now? He
4 must be old. I am ten years older. Is he alive? Did he die
5 in jail? Is he still in jail? Did I do my duty? Did
6 I do him justice? Not Raymond Rivera, the short, fat
7 guy, as was described by Mrs. Sosa. Was he a liar? Was
8 he a crook? Was he telling the truth? Did he deserve
9 that I believe him? Was his testimony trustworthy? Was
10 he worth the deprivation of the freedom of this man?
11 Am I in peace with my conscience? Am I a just man? Am
12 I just woman?"

13 Those, ladies and gentlemen of the jury, are
14 the questions you will have to answer, each one of you,
15 in the years to come. And I submit to you that if you believe
16 Raymond Rivera and condemn this man to jail, you will be
17 doing an injustice to him, the greatest injustice I have
18 ever seen in my life as a lawyer. You have an enormous
19 responsibility on your shoulders. Within my limitations,
20 within the limitations I have in the language, I feel I
21 have fulfilled my duty. I beg of you to fulfill yours and
22 do justice to this man as a human being, to give due regard
23 to Angelo Roche, as Judge Broderick instructed you to do.
24 Throw away the testimony of Rivera, so that when the years
25 go and you recall the summer of 1977, when you remember the

739A

1 mmhh 11

2 man with the strong Spanish accent and the balding man who
3 sat here for weeks and weeks and was only mentioned by
4 Raymond Rivera, you can tell yourselves and your relatives,
5 "I did justice to that man."

6 Thank you very much for being so patient. Thank
7 you very much for your time and your attention. I implore
8 God he illuminates you and have you do justice in this
9 case. Thank you very much.

10 THE COURT: Thank you, Mr. Mendez.

11 Ladies and gentlemen, we will take a short recess
12 now.

13 (Jury excused.)

14 MR. MOSS: Your Honor, the government has no
15 rights to appeal in a case of this sort, so I am not
16 protecting the record. I made no objections during Mr.
17 Mendez's summation because it dawned upon me that my noting
18 objections for the record would not preserve any rights
19 that I have in the Court of Appeals. And it is clear that
20 your Honor is not intent upon interrupting summations.
21 And so post facto the discussions of what may or may not
22 have been error in the course of a defense attorney's
23 summation becomes a meaningless and futile gesture.

24 THE COURT: I noted only one error, aside from
25 errors of recollection. I gave instructions at the beginning

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1 mmhh 12

2 of summations that I did not want attorneys' opinions to
3 be inserted in this case, and Mr. Mendez's representation that
4 this would be an injustice which was predicated to some
5 extent on his career as a lawyer was a violation of that.

6 MR. MENDEZ: I want to apologize. The
7 passion of the moment caused me to say that. I should not
8 have said it. I apologize to the Court.

9 Are there any others?

10 MR. MOSS: That was the one I was going to bring
11 to your attention.

12 THE COURT: I shall deal with it in my charge.

13 A 15-minute recess.

14 (Recess)

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(In open court; jury not present.)

MR. MOSS: Your Honor, before the jury comes in, may I make just one more point?

I believe Mr. Mendes made one other error in the course of his summation --

MR. BRODERICK: Pardon me, Mr. Moss, can I interrupt you for just a moment?

I don't think the interpreters are here, your Honor.

THE COURT: All right. They are here now.

Are you referring to the speculation as to the reason for my instruction with respect to Orlando Machado?

MR. MOSS: No. Actually, I was referring to the fact that he vouched for the impeccable record of his client when in fact his client has a very extensive rap sheet, including many convictions and time served in jail.

MR. MENDES: I didn't say a word about record, and I only spoke about narcotics, and he does not have a single narcotic accusation, conviction, or anything like that.

MR. MOSS: I think that is incorrect.

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O'Rourke Krieger

AFFIDAVIT OF PERSONAL SERVICE

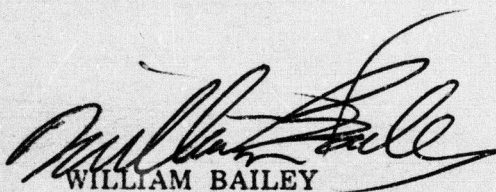
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 9 day of Feb., 1978 at No. 1 St. Andrews Pl., NYC

deponent served the within *Appendix Vol II*
upon
U.S. Atty. So. Dist. of NY

the Appellee herein, by delivering true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
9 day of Feb. 1978


WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945

Qualified in Richmond County
Commission Expires March 30, 1978



Edward Bailey